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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,371	02/07/2001	Cornelia Sprengard-Eichel	8369Q	6846

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/23/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/778,371

Applicant(s)

SPRENGARD-EICHEL ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2 is/are allowed.
- 6) ☒ Claim(s) 1,3-5,9,10 and 12-18 is/are rejected.
- 7) ☒ Claim(s) 6,19-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 – 4, 7 and 17 – 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Pyrozyk et al. (US 5,431,622).

With respect to claim 1, Pyrozyk et al. (hereinafter "Pyrozyk) discloses an absorbent article comprising a backsheet (54), a liquid pervious topsheet (52) joined to the backsheet (figure 1), an absorbent core (46) disposed intermediate the topsheet and the backsheet (col. 3, lines 8 – 26) and a thermal cell actuator (144) which adds or removes heat from at least a portion of the absorbent article upon actuation so as to result in a useful function of maintaining the article at a predefined temperature as set forth in col. 5, lines 4 – 10.

With reference to claim 3, Pyrozyk discloses an absorbent article comprising a backsheet (54), a liquid pervious topsheet (52) joined to the backsheet (figure 1), an absorbent core (46) disposed intermediate the topsheet and the backsheet (col. 3, lines 8 – 26) and an electrically powered thermal cell actuator (144) which adds or removes heat from at least a portion of the absorbent article upon actuation so as to result in a useful function of maintaining the article at a predefined temperature as set forth in col. 5, lines 4 – 10 and in figure 4.

As to claim 4, Pyrozyk discloses an absorbent article wherein the thermal cell actuator function is performed at a location between the backsheet of the article and the skin of the wearer in response to a change in temperature as set forth in col. 1, lines 45 – 52.

With reference to claim 7, Pyrozyk discloses an absorbent article wherein the thermal cell actuator controls temperature in the article as set forth in col. 5, lines 5 – 10.

With reference to claim 17, Pyrozyk discloses an article wherein the thermal cell actuator changes a mechanical property of a component of the article other than the thermal cell actuator as set forth in col. 5, lines 5 – 10.

Since the applicant discloses that the thermostat is used to add heat to the absorbent article, the examiner contends that this addition of heat to at least the moisture barrier (disclosed as a plastic sheet in col. 3, lines 19 – 21) would cause the material to become more pliable thereby changing a mechanical property of this barrier layer.

As to claim 18, Pyrozyk discloses the component as a cuff opening in figure 1. The examiner contends that the edge of the barrier layer that leads to the top of the article may be considered a cuff opening.

Claims 1, 4, 7, 9 – 10 and 13 – 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Glaug et al. (US 5,797,892).

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With respect to claim 1, Glaug et al. (hereinafter "Glaug") discloses an absorbent article comprising a backsheet (58), a liquid pervious topsheet (60) joined to the backsheet (col. 5, lines 34 – 38), an absorbent core (82) disposed intermediate the topsheet and the backsheet (figure 6) and a thermal cell actuator (54) which adds or removes heat from at least a portion of the absorbent article upon actuation so as to result in a useful function selected from the listed group as set forth in col. 8, line 51 to col. 9, line 16. The temperature change member (54) of Glaug will remove heat from at least a portion of the absorbent article upon actuation so as to result in maintaining the article at a predefined temperature (i.e., a change from about 2.8° – 13.8° C) as set forth in col. 9, lines 3 – 5.

Regarding claim 4, Glaug discloses an absorbent article wherein the thermal cell actuator performs a function between the backsheet of the article and the skin of the wearer in response to a change in relative humidity, moisture or temperature as set forth in col. 8, lines 51 – 57.

As to claim 7, Glaug discloses an absorbent article wherein the thermal cell actuator controls humidity or temperature in the article as set forth in col. 8, lines 51 – 64.

With respect to claims 9 and 10, see col. 9, lines 45 – 52.

As to claim 13, Glaug discloses an absorbent article wherein the thermal cell actuator is not in contact with the wearer's skin when the article is worn as set forth in figure 6.

Regarding claim 14, Glaug discloses an article wherein the thermal cell actuator is in vapor communication with the wearer's skin such that vapor can condensate inside the article as set forth in col. 16, lines 42 – 48.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 – 13 and 15 – 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pyrozyk (US 5,431,622).

The difference between Pyrozyk and claim 12 is the provision that the thermal cell actuator provides a temperature in the range of 15° and 25° C.

Pyrozyk discloses an absorbent article including a thermal cell actuator the maintains the article at a predefined temperature as set forth in col. 5, lines 5 – 10.

It would have been obvious to one of ordinary skill in the art to modify the temperature at which the article is maintained since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range requires only a level of ordinary skill in the art.

As to claim 13, Pyrozyk discloses a thermal cell actuator that is not in contact with the wearer's skin when the article is worn as set forth in figure 4.

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As to claim 15, Pyrozyk discloses a thermal cell actuator that is triggered by a user during application of the article as set forth in col. 5, lines 5 – 10. The examiner contends that any time used to prepare the article for use (i.e. applying the bandage to the skin, setting the thermostat, etc.) may be considered as the application of the article.

The difference between Pyrozyk and claim 16 is the provision that the temperature is constant for at least 1 hour.

Pyrozyk discloses the use of thermal cell actuator to maintain the water at a certain temperature.

The examiner contends that the device of Pyrozyk is fully capable of maintaining a constant temperature for at least 1 hour since the device is electrically powered and would be sustained by an electric connection that is capable of lasting at least one hour if desired.

Allowable Subject Matter

Claim 2 is allowed.

Claims 6, 11 and 19 – 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed October 20, 2003 have been fully considered but they are not persuasive.

With respect to the applicant's arguments that Pyrozyk does not disclose the topsheet (52) being joined to the backsheet (54), the examiner disagrees and refers to col. 1, lines 45 – 52 and col. 3, lines 19 – 21 which disclose the wound contacting surface, or topsheet, connected to the fluid absorbent medium which is in turn connected to the moisture barrier, thereby providing the topsheet being joined to the backsheet by way of the fluid absorbent medium.

Regarding the applicant's argument that Pyrozyk does not disclose maintaining the article at a predefined temperature, the examiner disagrees. By applicant's own admission on page 8 of the reply dated October 16, 2003, the applicant states that "Pyrozyk only speaks of keeping a reservoir of water at a pre-defined temperature." The examiner agrees and contends that this meets the claimed limitations of maintaining the article at a pre-defined temperature. If the reservoir of water within the article is kept at a pre-defined temperature, even if only for a second, the article is considered to be maintained at that temperature.

The applicant argues that Pyrozyk provides no teaching or suggestion of increased pliability of the moisture barrier. Since the applicant discloses that the thermostat is used to add heat to the absorbent article, the examiner contends that this addition of heat to at least the moisture barrier (disclosed as a plastic sheet in col. 3, lines 19 – 21) would cause the material to become more pliable thereby changing a mechanical property of this barrier layer.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

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(i.e., a cuff for fecal isolation) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to the applicant's arguments that Glaug fails to teach a predetermined temperature, the examiner disagrees. Glaug discloses that the training aid provides a surface temperature change of from about 5 to about 25°F (col. 9, lines 3 – 5). While the applicant considers this a range of temperature changes, the examiner contends that this range is still a temperature that has been predefined by Glaug. If, for example, the temperature changes 5°, 6° or 14°, this is still considered a predetermined temperature because Glaug has already determined that the temperature will fall within this range.

Regarding the applicant's argument that Glaug fails to teach or suggest an actuator being in vapor communication with the wearer's skin, the examiner contends that since the thermal cell actuator results in a temperature change that is noticed by the wearer, then the actuator is considered to be in, at least, vapor communication with the wearer's skin and is fully capable of allowing vapor to condensate inside the article.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
December 18, 2003


WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700